

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201126003**

Release Date: 7/1/2011

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:

Index Number: 338.09-00, 368.06-00, 301.00-00

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:6

PLR-104651-11

Date:

April 04, 2011

Legend

Parent =

Target =

Funds =

Subgroup A =

Subgroup B =

Subgroup A LLC =

Subgroup B LLC =

Target Sub =

Acquiring =

Acquiring LLC =

New HoldCo =

Parent LLC =

New Parent LLC =

New HoldCo LLC =

NewCo 1 =

NewCo 2 =

NewCo 3 =

Subgroup A Corporation =

State A =

State B =

Date 1 =

Year 1 =

a =

b =

c =
d =
e =
f =
g =
h =
i =
j =
k =

Dear :

This letter responds to your January 24, 2011, request for rulings on certain federal income tax consequences of the Proposed Transaction (defined below). The information provided in that request and in letters dated February 21, 2011, March 24, 2011, and April 1, 2011, is summarized below.

Summary of Facts

Parent is a State A corporation and the common parent of a consolidated group (the "Parent Group"). Parent has one class of stock outstanding. Parent's stock is owned approximately a percent by the Funds and approximately b percent by management of Target (collectively, the "Current Shareholders"). Prior to the Proposed Transaction, Parent may redeem certain small shareholders and certain options may be exercised.

Parent is a holding company. Parent owns all of the stock of Target. Parent acquired the stock of Target in Year 1 (the "Year 1 Acquisition"). Parent also owns Parent LLC, a dormant limited liability company disregarded as separate from Parent for federal income tax purposes. Parent also owns NewCo 1, NewCo 2, and NewCo 3, each a State A limited liability company treated as a corporation for federal income tax purposes and formed for the purpose of effecting the Proposed Transaction.

Target generally conducts its business and owns associated properties through direct and indirect wholly owned entities, most of which are limited liability companies disregarded as separate from Target for federal income tax purposes.

The Parent Group is divided into Subgroup A and Subgroup B. The parent of Subgroup A is Subgroup A LLC, and the parent of Subgroup B is Subgroup B LLC. Subgroup A LLC and Subgroup B LLC are each wholly owned by Target and disregarded as separate from Target for federal income tax purposes.

Subgroup A LLC and Subgroup B LLC each directly and indirectly owns several limited liability companies that are disregarded as separate from Target for federal income tax purposes. Subgroup B LLC also owns Target Sub, a limited liability company treated as a corporation for federal income tax purposes. Subgroup A constitutes, by value, more than c percent of the Parent Group's gross assets and approximately d percent of its net assets.

Acquiring is a publicly traded State B corporation that is taxable as a real estate investment trust ("REIT") under subchapter M of the Code. Acquiring indirectly owns Acquiring LLC, which is also taxable as a REIT for federal income tax purposes. Acquiring LLC will acquire the stock of a corporate successor to Parent in the Proposed Transaction.

Acquiring LLC desires to acquire Subgroup A through the acquisition of the stock of the successor to Parent without acquiring the legal entities that currently are Parent or Target for federal income tax purposes.

Proposed Transaction

To accomplish the objective described above, Parent has proposed a series of transactions (collectively, the "Proposed Transaction") which will occur as part of an integrated plan pursuant to a stock purchase agreement (the "SPA") entered into on Date 1. Prior to signing the SPA on Date 1, Parent declared and paid dividends to the Current Shareholders of approximately \$e in cash (the "Parent Distributions"). Steps (ix) through (xv) will occur on the day after Steps (i) through (xiii) occur.

(i) Existing corporate services and other intercompany agreements between Subgroup A and Parent, Target, and Subgroup B will be terminated (except for the existing master lease agreements ("MLAs") for the assets of Subgroup A).

(ii) Intercompany accounts among Subgroup A and Parent, Target, and Subgroup B will be eliminated.

(iii) The Current Shareholders will transfer their Parent shares to New HoldCo (which was recently formed on their behalf as a State A corporation) solely in exchange for New HoldCo stock, Parent will transfer the interests of Parent LLC to New HoldCo for no value, Parent will merge with and into Parent LLC, Parent LLC will be renamed New

Parent LLC, and New Parent LLC will distribute the stock of Target to New HoldCo (collectively, the “New HoldCo Reorganization”).

(iv) New Parent LLC will distribute NewCo 1, NewCo 2, and NewCo 3 to New HoldCo. New HoldCo will contribute NewCo 3 to NewCo 2, and NewCo 2 to NewCo 1.

(v) NewCo 1 will contribute common and preferred membership interests of NewCo 1 to NewCo 2. NewCo 2 will contribute the NewCo 1 common and preferred membership interests to NewCo 3.

(vi) Subgroup B LLC will incur approximately \$f to \$g of third-party debt to pay down an existing term loan and potentially for other uses.

(vii) As part of the deemed liquidation in the § 338(h)(10) transaction in step (viii), Target will distribute the interests in Subgroup A LLC, excess cash (if any), and other assets (as agreed by the parties) to New HoldCo (the “Target Distribution”).

(viii) New HoldCo will transfer the stock of Target to NewCo 3 in exchange for the NewCo 1 common and preferred membership interests (the “Target Acquisition”). The preferred membership interests (the “Preferred Interests”) will have a liquidation preference of at least \$h, be redeemable at the option of the holder or the issuer after i years (or by the issuer if there is an earlier initial public offering or change of control), provide for cumulative dividends at a market-based rate payable semi-annually, and have no right to vote on matters submitted to a shareholder vote (including the election of directors) except as required by state law. The Preferred Interests will be subject to a binding obligation for New HoldCo to sell them to an unrelated party immediately after New HoldCo’s receipt of the interests. Pursuant to this binding obligation, New HoldCo will transfer the Preferred Interests to an unrelated third party (either an investor or a service provider).

(ix) The existing MLAs will be terminated. New HoldCo will contribute all of the NewCo 1 common membership interests and other assets (as agreed by the parties) to New Parent LLC. New HoldCo will distribute all of the interests of New Parent LLC and excess cash (if any) to the Current Shareholders (the “New HoldCo Distribution”).

(x) The Current Shareholders will contribute the stock of New HoldCo to New Parent LLC.

(xi) Subgroup A LLC will convert into a corporation, Subgroup A Corporation, pursuant to the State A conversion statute. New HoldCo will convert to a limited liability company, New HoldCo LLC, pursuant to the State A conversion statute (together, the “Subgroup A Reorganization”).

(xii) Acquiring LLC will purchase all of the stock of Subgroup A Corporation in exchange for cash and, at Acquiring's election, Acquiring stock in an amount that is less than j percent of Acquiring's stock (the "Subgroup A Acquisition"). No election under § 338 will be made with respect to the Subgroup A Acquisition. By operation of § 856(i), Subgroup A Corporation will become a qualified REIT subsidiary and will be deemed to liquidate into Acquiring LLC.

(xiii) Acquiring or a subsidiary thereof may exercise its option, granted under the SPA, to purchase a k percent interest in NewCo 1.

(xiv) New HoldCo LLC will merge with and into New Parent LLC.

(xv) The parties will enter into new MLAs for the assets of Subgroup A at arm's length terms.

A timely election under § 338(h)(10) will be made in respect of the transfer of Target stock pursuant to the Target Acquisition and the resulting deemed transfer of the stock of Target Sub (the "Target Sub Acquisition").

Representations

The following representations are made with regard to the named transaction (or transactions):

A. New HoldCo Reorganization

(a) Immediately prior to the New HoldCo Reorganization, New HoldCo will be engaged in no business activity, will have no tax attributes (including those specified in § 381(c)), and will hold no assets (except for nominal assets necessary to pay incidental expenses or maintain New HoldCo's status as a corporation).

(b) The fair market value of the New HoldCo stock received by each of the Current Shareholders will be approximately equal to the fair market value of the Parent stock surrendered in the exchange.

(c) Immediately following the consummation of the New HoldCo Reorganization, the Current Shareholders will own all outstanding shares of New HoldCo common stock and will own such stock solely by reason of their ownership of Parent immediately prior to the New HoldCo Reorganization.

(d) New HoldCo has no plan or intention to issue additional shares of its stock following the New HoldCo Reorganization.

(e) Immediately following the consummation of the New HoldCo Reorganization, New HoldCo will possess the same assets and liabilities, except for assets used to pay expenses incurred in connection with the New HoldCo Reorganization (if any), as those possessed by Parent immediately prior to the New HoldCo Reorganization. Assets used to pay expenses (if any) will constitute less than one percent of the fair market value of the net assets of Parent immediately prior to the New HoldCo Reorganization.

(f) At the time of the New HoldCo Reorganization, Parent will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Parent.

(g) New HoldCo has no plan or intention to reacquire any of its stock issued in the New HoldCo Reorganization.

(h) The liabilities of Parent assumed by New HoldCo (within the meaning of § 357(d)) were incurred by Parent in the ordinary course of its business and are associated with the assets transferred.

(i) The Current Shareholders, Parent, and New HoldCo will pay their respective expenses, if any, incurred in connection with the New HoldCo Reorganization.

(j) Parent is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

(k) New HoldCo has no plan or intention to sell or otherwise dispose of any of the assets of Parent acquired in the transaction, except for dispositions made in the ordinary course of business or as otherwise described in this letter.

B. Target Acquisition

(l) Pursuant to the Target Acquisition, in a single transfer, NewCo 3 will acquire all of the outstanding Target stock.

(m) The amount of consideration paid for the Target stock in the Target Acquisition will be approximately equal to the value of the Target stock acquired.

(n) Target is a member of the selling consolidated group (as defined in § 338(h)(10)(B)) of which Parent (or its successors, New HoldCo and Subgroup A Corporation) will be the common parent, and will be so for the taxable period that includes the Target Acquisition.

(o) At the time of the Target Acquisition, Target will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Target.

(p) Immediately after the Proposed Transaction, Acquiring LLC will not, through actual or constructive ownership, control NewCo 3 within the meaning of § 304(c).

(q) Immediately after the Proposed Transaction, NewCo 3 will not be attributed any stock held by Acquiring LLC pursuant to the rules of § 318(a) (without regard to § 318(a)(4)).

(r) There is no plan or intention on the part of NewCo 3 to sell or otherwise dispose of any of the shares of Target stock acquired in the Target Acquisition.

(s) There is no plan or intention to liquidate Target, NewCo 1, NewCo 2, or NewCo 3, or to merge Target, NewCo 1, NewCo 2, or NewCo 3 into any other corporation, following the Target Acquisition.

(t) New HoldCo (or Parent as predecessor to New HoldCo), on the date of the execution of the SPA (the "Target Plan Date"), and at all times thereafter until the final liquidating distribution is completed, will own all of the single outstanding class of Target stock.

(u) Except in connection with the Year 1 Acquisition, no shares of Target have been redeemed during the three years preceding the Target Plan Date.

(v) All transfers from Target to New HoldCo will occur within a single taxable year of Target.

(w) Target will not have acquired assets in any nontaxable transaction at any time, except for acquisitions occurring more than three years prior to the Target Plan Date or liquidations of wholly owned subsidiaries in connection with the Year 1 Acquisition or thereafter.

(x) No assets of Target have been, or will be, disposed of by New HoldCo (or Parent as predecessor to New HoldCo), except for dispositions in the ordinary course of business, or dispositions occurring more than three years prior to the Target Plan Date.

(y) The Target Acquisition will not be preceded or followed by the transfer of all or a part of the business assets of Target to another corporation which is the alter ego of Target and which, directly or indirectly, is owned more than 20 percent in value by persons holding directly or indirectly more than 20 percent in value of the stock in Target. For purposes of this representation, ownership will be determined by applying the constructive ownership rules of § 318(a), as modified by § 304(c)(3).

(z) Prior to the Target Plan Date, no assets of Target will have been distributed in kind, transferred, or sold to New HoldCo (or Parent as predecessor to New HoldCo), except

for cash (or associated intercompany receivables) distributed to fund the Parent Distributions, transactions occurring in the normal course of business, and transactions occurring more than three years prior to the Target Plan Date.

(aa) Target will report all earned income represented by assets that will be distributed to New HoldCo such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.

(bb) The fair market value of the assets of Target will exceed its liabilities, both at the Target Plan Date and immediately prior to the Target Acquisition.

(cc) There is no intercorporate debt existing between New HoldCo (or Parent as predecessor to New HoldCo) and Target, and none has been cancelled, forgiven, or discounted, except for the elimination through distribution or contribution of intercompany debt in the normal course of business based on historic practices, attributable to the funding of the Parent Distributions, pursuant to the Proposed Transaction, or pursuant to transactions that occurred more than three years prior to the Target Plan Date.

(dd) New HoldCo is not an organization that is exempt from federal income tax under § 501 or another provision of the Code.

(ee) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to the Target Acquisition have been fully disclosed.

C. Target Sub Acquisition

(ff) Target Sub is a member of the selling consolidated group (as defined in § 338(h)(10)(B)) of which Parent (or its successors, New HoldCo and Subgroup A Corporation) will be the common parent, and will be so for the taxable period that includes the Target Acquisition.

(gg) At the time of the Target Sub Acquisition, Target Sub will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Target Sub.

(hh) The fair market value of the assets of Target Sub will exceed its liabilities immediately following the Target Sub Acquisition.

(ii) There is no plan or intention to liquidate Target Sub, or to merge Target Sub into any other corporation, following the Target Sub Acquisition.

(jj) Target, on the Target Plan Date, and at all times thereafter until the final liquidating distribution is completed, will own all of the single outstanding class of Target Sub stock.

(kk) No shares of Target Sub have been redeemed during the three years preceding the Target Plan Date.

(ll) All transfers from Target Sub to Target will occur on the effective date of the Target Sub § 338(h)(10) election.

(mm) Target Sub will not have acquired any material assets in any nontaxable transaction at any time, except for acquisitions occurring more than three years prior to the Target Plan Date.

(nn) No assets of Target Sub have been, or will be, disposed of by Target Sub except for dispositions in the ordinary course of business, or dispositions occurring more than three years prior to the Target Plan Date.

(oo) The Target Sub Acquisition will not be preceded or followed by the transfer of all or a part of the business assets of Target Sub to another corporation which is the alter ego of Target Sub and which, directly or indirectly, is owned more than 20 percent in value by persons holding directly or indirectly more than 20 percent in value of the stock in Target Sub. For purposes of this representation, ownership will be determined by applying the constructive ownership rules of § 318(a), as modified by § 304(c)(3).

(pp) Prior to the Target Plan Date, no assets of Target Sub will have been distributed in kind, transferred, or sold to Target, except for cash (or associated intercompany receivables) distributed to fund the Parent Distributions, transactions occurring in the normal course of business, and transactions occurring more than three years prior to the Target Plan Date.

(qq) Target Sub will report all earned income represented by assets that will be distributed to Target such as receivables being reported on a cash basis, unfinished construction contracts, commissions due, etc.

(rr) The fair market value of the assets of Target Sub will exceed its liabilities, both at the Target Plan Date and immediately prior to the time the Target Sub § 338(h)(10) election is effective.

(ss) There is no intercorporate debt existing between Target and Target Sub, and none has been cancelled, forgiven, or discounted, except for the elimination through distribution or contribution of intercompany debt in the normal course of business based on historic practices, attributable to the funding of the Parent Distributions, pursuant to the Proposed Transaction, or pursuant to transactions that occurred more than three years prior to the Target Plan Date.

(tt) Target Sub is not an organization that is exempt from federal income tax under § 501 or another provision of the Code.

(uu) All other transactions undertaken contemporaneously with, in anticipation of, in conjunction with, or in any way related to the Target Sub § 338(h)(10) election have been fully disclosed.

D. Subgroup A Reorganization

(vv) Immediately prior to the Subgroup A Reorganization, Subgroup A Corporation will be engaged in no business activity, will have no tax attributes (including those specified in § 381(c)), and will hold no assets.

(ww) The fair market value of the Subgroup A Corporation stock received by New Parent LLC for federal income tax purposes will be approximately equal to the fair market value of the New HoldCo stock deemed surrendered in the exchange.

(xx) Immediately following the consummation of the Subgroup A Reorganization, New Parent LLC will own all outstanding shares of Subgroup A Corporation common stock for federal income tax purposes and will own such stock solely by reason of its ownership of New HoldCo immediately prior to the Subgroup A Reorganization.

(yy) Subgroup A Corporation has no plan or intention to issue additional shares of its stock following the Subgroup A Reorganization.

(zz) Immediately following the consummation of the Subgroup A Reorganization, Subgroup A Corporation will possess virtually the same assets and liabilities, except for assets used to pay expenses incurred in connection with the Subgroup A Reorganization (if any), as those possessed by New HoldCo immediately prior to the Subgroup A Reorganization. Assets used to pay expenses (if any) will constitute less than one percent of the fair market value of the net assets of New HoldCo immediately prior to the Subgroup A Reorganization.

(aaa) At the time of the Subgroup A Reorganization, New HoldCo will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in New HoldCo.

(bbb) Subgroup A Corporation has no plan or intention to reacquire any of its stock issued in the Subgroup A Reorganization.

(ccc) The liabilities of New HoldCo assumed by Subgroup A Corporation (within the meaning of § 357(d)) were incurred by New HoldCo in the ordinary course of its business and are associated with the assets transferred.

(ddd) New Parent LLC, New HoldCo, and Subgroup A Corporation will pay their respective expenses, if any, incurred in connection with the Subgroup A Reorganization.

(eee) New HoldCo is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

(fff) Subgroup A Corporation has no plan or intention to sell or otherwise dispose of any of the assets of New HoldCo acquired in the transaction, except for dispositions made in the ordinary course of business or as otherwise described in this letter.

Rulings

Based solely on the information submitted and representations made, we rule as follows with regard to the following named transaction (or transactions):

A. New HoldCo Reorganization

(1) The New HoldCo Reorganization will qualify as a reorganization within the meaning of § 368(a)(1)(F). Parent and New HoldCo will each be a party to the reorganization under § 368(b).

(2) The Current Shareholders will not recognize gain or loss upon the receipt of New HoldCo stock in exchange for Parent stock (§ 354(a)(1)).

(3) The tax basis of New HoldCo stock received by each Current Shareholder will be the same as such shareholder's tax basis in its shares of Parent stock surrendered in the New HoldCo Reorganization (§ 358(a)(1)).

(4) The holding period of each Current Shareholder in the shares of New HoldCo stock received will include the period during which such shareholder held the shares of Parent stock surrendered in the New HoldCo Reorganization, provided that the Parent stock is held as a capital asset on the date of the exchange (§ 1223(1)).

(5) Parent will not recognize gain or loss on the transfer of its assets to New HoldCo in exchange for New HoldCo stock and the assumption by New HoldCo of the liabilities of Parent (§§ 361(a) and 357(a)).

(6) Parent will not recognize gain or loss on the distribution of each share of New HoldCo stock to the Current Shareholders in exchange for each share of Parent stock (§ 361(c)(1)).

(7) New HoldCo will not recognize gain or loss on the receipt of Parent's assets in exchange for New HoldCo stock and the assumption of Parent's liabilities (§ 1032(a)).

(8) New HoldCo's tax basis in each asset of Parent acquired will be the same as the tax basis of the asset in the hands of Parent immediately before the New HoldCo Reorganization (§ 362(b)).

(9) The holding period of the Parent assets in the hands of New HoldCo will include the period during which such assets were held by Parent (§ 1223(2)).

(10) As provided by § 381(c)(2) and Treas. Reg. § 1.381(c)(2)-1, New HoldCo will succeed to and take into account the earnings and profits ("E&P"), or deficit in E&P of Parent, at the effective time of the New HoldCo Reorganization. Any deficit in E&P of New HoldCo or Parent will be used only to offset E&P accumulated after that time.

(11) Pursuant to § 381(a) and Treas. Reg. § 1.381(a)-1, New HoldCo will succeed to and take into account the items of Parent described in § 381(c) as of the New HoldCo Reorganization date. These items will be taken into account by New HoldCo subject to the conditions and limitations specified in §§ 381, 382, 383, and 384 and the regulations thereunder.

(12) The tax year of the affiliated group of Parent will not end as a result of the New HoldCo Reorganization and such tax year will continue with New HoldCo as the successor to Parent in its capacity as the common parent of the affiliated group of corporations of which Parent was the common parent (Treas. Reg. §§ 1.381(b)-1(a)(2) and 1.1502-75(d)(2)(i)).

B. Target Acquisition and Target Sub Acquisition

(13) NewCo 1 will not recognize gain or loss on the receipt of NewCo 2 membership interests deemed received in exchange for NewCo1 membership interests (§ 1032(a)).

(14) NewCo 2 will not recognize gain or loss on the receipt of NewCo 3 membership interests deemed received in exchange for NewCo1 membership interests. The parties will be treated as if NewCo 1 contributed to NewCo 2 cash equal to the fair market value of the NewCo 1 membership interests. NewCo 1's basis in NewCo 2 will be increased by the amount of the deemed cash contribution to NewCo 2 (Treas. Reg. § 1.1032-3).

(15) NewCo 3 will not recognize gain or loss on the receipt of Target stock in exchange for NewCo1 membership interests. NewCo 3 will be treated as if NewCo 3 purchased the NewCo 1 membership interests for fair market value with cash contributed to NewCo 3 by NewCo 2. NewCo 2's basis in NewCo 3 will be increased by the amount of the deemed cash contribution to NewCo 3 (Treas. Reg. § 1.1032-3).

(16) The Target Acquisition will qualify as a qualified stock purchase within the meaning of § 338(d)(3) ("QSP").

(17) New HoldCo (and its successor, Subgroup A Corporation) and NewCo 3 (by the common parent of its consolidated group) will be eligible to make an election under § 338(h)(10) with respect to NewCo 3's QSP of Target.

(18) Assuming an election under § 338(h)(10) is made with respect to Target, an election under § 338(h)(10) may be made in respect of NewCo 3's deemed purchase of the stock of Target Sub.

(19) Pursuant to Treas. Reg. § 1.338(h)(10)-1, "old" Target will recognize gain or loss on the deemed sale of its assets, other than the stock of Target Sub (Treas. Reg. § 1.338(h)(10)-1(d)(5)(iii)), to "new" Target, and "new" Target will determine its basis in the assets deemed acquired in accordance with the rules of Treas. Reg. § 1.338-5.

(20) Pursuant to Treas. Reg. § 1.338(h)(10)-1, "old" Target Sub will recognize gain or loss on the deemed sale of its assets to "new" Target Sub, and "new" Target Sub will determine its basis in the assets deemed acquired in accordance with the rules of Treas. Reg. § 1.338-5.

(21) Target Sub will be treated as if, after the deemed sale of assets to "new" Target Sub and prior to the deemed liquidation of Target under § 332, Target Sub transferred all of its assets to Target and ceased to exist. The deemed liquidation of Target Sub will qualify as a complete liquidation under § 332.

(22) No gain or loss will be recognized by Target or Target Sub as a result of the deemed liquidation of Target Sub (§§ 332(a), 336(d)(3), 337(a), and 337(b)).

(23) Target's tax basis in each asset deemed received from Target Sub in the deemed liquidation of Target Sub will equal the tax basis of that asset in the hands of Target Sub immediately before the deemed liquidation (§ 334(b)(1)).

(24) Target's holding period in each asset received from Target Sub in the deemed liquidation of Target Sub will include the period during which the asset was held by Target Sub (§ 1223(2)).

(25) Target will succeed to and take into account the E&P, or deficit in E&P, of Target Sub as of the date of the deemed liquidation of Target Sub (§§ 381(a)(1) and 381(c)(2)). Any deficit in E&P will be used only to offset E&P accumulated after the date of the deemed liquidation of Target Sub (§ 381(c)(2)(A) and (B)). To the extent the Target Sub E&P is reflected in the Target E&P, the Target Sub E&P to which Target succeeds must be adjusted to prevent duplication (Treas. Reg. § 1.1502-33(a)).

(26) Target will succeed to and take into account the items of Target Sub described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383, and 384 and the regulations thereunder.

(27) Target will be treated as if, after the deemed sale of assets to “new” Target, it transferred all of its assets to New HoldCo and ceased to exist (§ 1.338(h)(10)-1(d)(4)(i)).

(28) The Target Distribution and the deemed transfer of Target's assets to New HoldCo pursuant to the Target § 338(h)(10) election, as described in Ruling (27), above, will be treated as a series of distributions pursuant to a plan of liquidation and will qualify as a complete liquidation of Target into New HoldCo under § 332. No gain or loss will be recognized by New HoldCo or Target as a result of the complete liquidation of Target (§§ 332(a), 336(d)(3), 337(a), and 337(b)).

(29) New HoldCo's tax basis in each asset received from Target in the deemed liquidation of Target and the Target Distribution will equal the tax basis of that asset in the hands of Target immediately before the deemed liquidation and the Target Distribution (§ 334(b)(1)).

(30) New HoldCo's holding period in each asset received from Target in the deemed liquidation of Target and the Target Distribution will include the period during which the asset was held by Target (§ 1223(2)).

(31) New HoldCo will succeed to and take into account the E&P, or deficit in E&P, of Target, including any E&P succeeded to as a result of the § 332 liquidation of Target Sub into Target, as of the date of the deemed liquidation of Target (§ 381(a)(1) and 381(c)(2)). Any deficit in E&P will be used only to offset E&P accumulated after the date of the deemed liquidation of Target (§ 381(c)(2)(A) and (B)). To the extent the Target E&P is reflected in the New HoldCo E&P, the Target E&P to which New HoldCo succeeds must be adjusted to prevent duplication (Treas. Reg. § 1.1502-33(a)).

(32) New HoldCo will succeed to and take into account the items of Target described in § 381(c), subject to the conditions and limitations specified in §§ 381, 382, 383, and 384 and the regulations thereunder.

C. Parent Distributions and New HoldCo Distribution

(33) The Parent Distributions and the New HoldCo Distribution will be treated as dividends equal to the sum of the cash and the fair market value of the property distributed to the extent of current and accumulated E&P of Parent (or its successors, New HoldCo and Subgroup A Corporation) (§ 301(c)(1)). To the extent that the Parent Distributions (or the New HoldCo Distribution) exceed available E&P, the amount of the Parent Distributions (or the New HoldCo Distribution) received by a Parent (or New

HoldCo) shareholder on each share of Parent (or New HoldCo) stock will be applied against and reduce a Parent (or New HoldCo) shareholder's basis in such share under § 301(c)(2), and the remaining portion of the Parent Distributions (or the New HoldCo Distribution), if any, with respect to such share will be treated as a gain from the sale or exchange of property pursuant to § 301(c)(3).

(34) The E&P of Parent (and its successors, New HoldCo and Subgroup A Corporation) will be reduced (but not below zero) by the sum of the amount of money and the fair market value of the property distributed as a result of each of the Parent Distributions and the New HoldCo Distribution pursuant to the rules of § 312(a). With respect to the New HoldCo Distribution, the accumulated E&P of New HoldCo that is reduced as a result of the New HoldCo Distribution will include the E&P to which New HoldCo succeeds as a result of the deemed liquidations of Target Sub and Target, adjusted to eliminate duplication of E&P pursuant to Treas. Reg. § 1.1502-33(a)(2).

(35) New HoldCo will recognize gain (if any), but not loss, on the distribution of any asset pursuant to the New HoldCo Distribution under § 311(a) and (b).

D. Subgroup A Reorganization

(36) The Subgroup A Reorganization will qualify as a reorganization within the meaning of § 368(a)(1)(F). New HoldCo and Subgroup A Corporation will each be a party to the reorganization under § 368(b).

(37) New Parent LLC will not recognize gain or loss upon the receipt of Subgroup A Corporation stock in exchange for New HoldCo stock (§ 354(a)(1)).

(38) The tax basis of Subgroup A Corporation stock received by New Parent LLC will be the same as its tax basis in its shares of New HoldCo stock surrendered in the Subgroup A Reorganization (§ 358(a)(1)).

(39) The holding period of New Parent LLC in the shares of Subgroup A Corporation stock received will include the period during which New Parent LLC held the shares of New HoldCo stock surrendered in the Subgroup A Reorganization, provided that the New HoldCo stock is held as a capital asset on the date of the exchange (§ 1223(1)).

(40) New HoldCo will not recognize gain or loss on the transfer of its assets to Subgroup A Corporation in exchange for Subgroup A Corporation stock and the assumption by Subgroup A Corporation of the liabilities of New HoldCo (§§ 361(a) and 357(a)).

(41) New HoldCo will not recognize gain or loss on the distribution of each share of Subgroup A Corporation stock to New Parent LLC in exchange for each share of New HoldCo stock (§ 361(c)(1)).

(42) Subgroup A Corporation will not recognize gain or loss on the receipt of New HoldCo's assets in exchange for Subgroup A Corporation stock and the assumption of New HoldCo's liabilities (§ 1032(a)).

(43) Subgroup A Corporation's tax basis in each asset of New HoldCo acquired will be the same as the tax basis of the asset in the hands of New HoldCo immediately before the Subgroup A Reorganization (§ 362(b)).

(44) The holding period of the New HoldCo assets in the hands of Subgroup A Corporation will include the period during which such assets were held by New HoldCo (§ 1223(2)).

(45) As provided by § 381(c)(2) and Treas. Reg. § 1.381(c)(2)-1, Subgroup A Corporation will succeed to and take into account the E&P, or deficit in E&P of New HoldCo, at the effective time of the Subgroup A Reorganization. Any deficit in E&P of Subgroup A Corporation or New HoldCo will be used only to offset E&P accumulated after that time.

(46) Pursuant to § 381(a) and Treas. Reg. § 1.381(a)-1, Subgroup A Corporation will succeed to and take into account the items of New HoldCo described in § 381(c) as of the Subgroup A Reorganization date. These items will be taken into account by Subgroup A Corporation subject to the conditions and limitations specified in §§ 381, 382, 383, and 384 and the regulations thereunder.

(47) The tax year of the affiliated group of New HoldCo will not end as a result of the Subgroup A Reorganization and such tax year will continue with Subgroup A Corporation as the successor to New HoldCo in its capacity as the common parent of the affiliated group of corporations of which New HoldCo was the common parent (Treas. Reg. §§ 1.381(b)-1(a)(2) and 1.1502-75(d)(2)(i)).

Caveats

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

Procedural Statements

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this ruling letter.

In accordance with the power of attorney on file in this office, a copy of this ruling letter is being sent to your authorized representative.

Sincerely,

Ken Cohen
Senior Technician Reviewer, Branch 3
Office of Associate Chief Counsel (Corporate)

cc: